

1

1 *insert* (1)
2 Section 1. Section 21.01, Penal Code, is amended by adding
3 a Subdivision (4) to read as follows:

4 "(4) 'Consent' means any voluntary indulgence in sexual
5 intercourse in no way induced by fraud, threat, or force, taking
6 into account that it may be revoked at any time before penetration
7 and that the absence of specific words or actions indicating such
8 voluntary indulgence in sexual intercourse will constitute the
9 absence of consent."

10 Sec. 2. Subsection (b), Section 21.02, Penal Code, is
11 amended to read as follows:

12 "(b) The intercourse is without the female's consent under
13 one or more of the following circumstances:

14 "(1) he compels her to submit or participate by force
15 that overcomes such earnest resistance as might reasonably be
16 expected under the circumstances;

17 "(2) he compels her to submit or participate by any
18 express or implied threat, communicated by action or words, that,
19 because of a reasonable fear of harm, prevents her [would-prevent]
20 resistance [by a woman of ordinary resolution];

21 "(3) she has not consented and he knows she is
22 unconscious or physically unable to resist;

23 "(4) he knows that as a result of mental disease or
24 defect she is at the time of the intercourse incapable either of
25 appraising the nature of the act or of resisting it;

26 "(5) she has not consented and he knows that she is
27 unaware that sexual intercourse is occurring;

"(6) he knows that she submits or participates because

1 she erroneously believes that he is her husband; or

2 "(7) he has intentionally impaired her power to
3 appraise or control her conduct by administering any substance
4 without her knowledge."

5 Sec. 3. Subsection (a), Section 21.03, Penal Code, is
6 amended to read as follows:

7 "(a) A person commits an offense if he commits rape as
8 defined in Section 21.02 of this code, criminal attempt as defined
9 in Section 15.01 of this code where the offense attempted is rape,
10 or rape of a child as defined in Section 21.09 of this code and
11 he:

12 "(1) causes serious bodily injury or attempts to cause
13 death to the victim or another in the course of the same criminal
14 episode; or

15 "(2) compels submission to the rape or attempts the
16 rape by threat of death, serious bodily injury, or kidnapping to
17 be imminently inflicted on anyone."

18 Sec. 4. Subsection (b), Section 21.04, Penal Code, is
19 amended to read as follows:

20 "(b) The intercourse is without the other person's consent
21 under one or more of the following circumstances:

22 "(1) the actor compels the other person to submit or
23 participate by force that overcomes such earnest resistance as
24 might be reasonably expected under the circumstances;

25 "(2) the actor compels the other person to submit or
26 participate by any express or implied threat, communicated by
27 action or words, that because of a reasonable fear of harm,

1 ~~prevents the other person's [would prevent] resistance [by a~~
2 ~~person of ordinary resolution];~~

3 "(3) the other person has not consented and the actor
4 knows the other person is unconscious or physically unable to
5 resist;

6 "(4) the actor knows that as a result of mental disease
7 or defect the other person is at the time of the deviate sexual
8 intercourse incapable either of appraising the nature of the act
9 or of resisting it;

10 "(5) the other person has not consented and the actor
11 knows the other person is unaware that deviate sexual intercourse
12 is occurring;

13 "(6) the actor knows that the other person submits
14 or participates because of the erroneous belief that he is the
15 other person's spouse; or

16 "(7) the actor has intentionally impaired the other
17 person's power to appraise or control the other person's conduct
18 by administering any substance without the other person's
19 knowledge."

20 Sec. 5. Subsection (a), Section 21.05, Penal Code, is
21 amended to read as follows:

22 "(a) A person commits an offense if he commits sexual abuse
23 as defined in Section 21.04 of this code, criminal attempt as
24 defined in Section 15.01 of this code where the offense attempted
25 is sexual abuse, or sexual abuse of a child as defined in Section
26 21.10 of this code and he:

27 "(1) causes serious bodily injury or attempts to cause

1 death to the victim or another in the course of the same criminal
2 episode; or

3 "(2) compels submission to the sexual abuse ~~or attempts~~
4 ~~sexual abuse~~ by threat of death, serious bodily injury, or
5 kidnapping to be imminently inflicted on anyone."

6 Sec. 6. Chapter 21, Penal Code, is amended by adding a
7 Section 21.13 to read as follows:

8 "Sec. 21.13. EVIDENCE OF PREVIOUS SEXUAL CONDUCT. (a)
9 In a prosecution for rape, aggravated rape, sexual abuse, or
10 aggravated sexual abuse, evidence of the victim's sexual conduct
11 prior to the alleged offense is not admissible nor may reference
12 to that conduct be made in the presence of the jury unless the
13 defendant applies to the court, before or during the trial, for
14 permission to introduce the evidence and the court finds, after
15 conducting a hearing in camera, that:

16 "(1) the victim's previous sexual conduct occurred
17 within one year before the date of the alleged offense or occurred
18 with the defendant at any time before the date of the alleged
19 offense; and

20 "(2) the evidence of victim's previous sexual conduct
21 is relevant.

22 "(b) The court shall control the admission or exclusion
23 of evidence during the trial.

24 "(c) This section does not limit the right of the state
25 or the accused to impeach credibility by showing prior felony
26 convictions nor the right of the accused to produce evidence of
27 promiscuous sexual conduct of a child 14 years old or older as

1 a defense to rape of a child, sexual abuse of a child, or indecency
2 with a child. If evidence of a previous felony conviction
3 involving sexual conduct or evidence of promiscuous sexual conduct
4 are admitted, the court shall instruct the jury as to the purpose
5 of the evidence and as to its limited use."

6 Sec. 7. Article 12.01, Code of Criminal Procedure, 1965,
7 as amended, is amended to read as follows:

8 "Article 12.01. FELONIES. Except as provided in Article
9 12.03, felony indictments may be presented within these limits,
10 and not afterward:

11 "(1) no limitation: murder and manslaughter;

12 "(2) ten years from the date of the commission of the
13 offense:

14 "(A) theft of any estate, real, personal or
15 mixed, by an executor, administrator, guardian or trustee, with
16 intent to defraud any creditor, heir, legatee, ward, distributee,
17 beneficiary or settlor of a trust interested in such estate;

18 "(B) theft by a public servant of government
19 property over which he exercises control in his official capacity;

20 "(C) forgery or the uttering, using or passing
21 of forged instruments;

22 "(3) five years from the date of the commission of
23 the offense:

24 "(A) theft, burglary, robbery;

25 "(B) arson.

26 ~~"(4) one year from the date of the commission of the~~
27 ~~offense; any felony in Penal Code Chapter 21 (Sexual Offenses);~~

1 "4 [~~5~~] three years from the date of the commission
2 of the offense: all other felonies."

3 Sec. 8. The Code of Criminal Procedure, 1965, as amended,
4 is amended by adding an Article 38.07 to read as follows:

5 "Article 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF
6 SEXUAL OFFENSE. A conviction under Chapter 21, Penal Code, is
7 supportable on the uncorroborated testimony of the victim of the
8 sexual offense. The court shall instruct the jury that the time
9 which lapsed between the alleged offense and the time it was
10 reported shall be considered by the jury only for the purpose of
11 assessing the weight to be given to the testimony of the victim."

12 Sec. 9. The Code of Criminal Procedure, 1965, as amended,
13 is amended by adding an Article 36.025 to read as follows:

14 "Article 36.025. EXCLUSION OF BYSTANDERS IN TRIALS FOR
15 CERTAIN SEXUAL OFFENSES. In the trial of a case in which the
16 offense of rape, aggravated rape, sexual abuse, aggravated sexual
17 abuse, rape of a child, sexual abuse of a child, or indecency
18 with a child is alleged, the court, during the taking of testimony
19 of the victim of the offense, may remove and exclude from the
20 courtroom all persons except officers of the court, the defendant,
21 persons participating in the trial of the case, and representatives
22 of the press whose numbers may be limited by the court in the
23 interest of justice."

24 Sec. 10. The Code of Criminal Procedure, 1965, as amended,
25 is amended by adding an Article 16.055 to read as follows:

26 "Article 16.055. EXCLUSION OF BYSTANDERS. In conducting
27 the examining trial of a case in which the accused is alleged to

1 have committed the offense of rape, aggravated rape, sexual abuse,
2 aggravated sexual abuse, rape of a child, sexual abuse of a child,
3 or indecency with a child, the magistrate, during the taking of
4 testimony of the victim of the alleged offense, may remove and
5 exclude from the courtroom all persons except the officers of the
6 court, the accused, persons participating in the trial, and
7 representatives of the press whose numbers may be limited by the
8 court in the interest of justice."

9 Sec. 11. The Penal Code is amended by adding a Chapter 49
10 to read as follows:

11 "Chapter 49. PUBLISHING IDENTITY OF RAPE VICTIM

12 "Sec. 49.01. DEFINITIONS. In this chapter:

13 "(1) 'Publish' means to broadcast, televise, or
14 distribute in any other manner by the use of a medium of public
15 information.

16 "(2) 'a medium of public information' includes
17 newspapers, television, radio, magazines, journals, and other
18 publications regularly distributed to the public or a portion of
19 the public, but does not include a telephone transmission or a
20 publication or record of the court or other state department.

21 "(3) 'identity' means the name, address, picture, or
22 physical or circumstantial description of a person.

23 "Sec. 49.02. PUBLISHING IDENTITY OF RAPE VICTIM. (a) A
24 person commits an offense if he intentionally, knowingly,
25 recklessly, or negligently harms the victim of an offense of rape,
26 aggravated rape, sexual abuse, aggravated sexual abuse, rape of
27 a child, sexual abuse of a child, or indecency with a child by

1 publishing the identity of the victim without the consent of the
2 victim or without a court order issued under Article 1914a, Revised
3 Civil Statutes of Texas, 1925, as amended, authorizing the
4 publishing.

5 "(b) An offense under this section is a Class B
6 misdemeanor."

7 Sec. 12. Chapter 3, Title 40, Revised Civil Statutes of
8 Texas, 1925, as amended, is amended by adding an Article 1914a
9 to read as follows:

10 "Article 1914a. ORDER AUTHORIZING PUBLICATION OF IDENTITY
11 OF RAPE VICTIM. The district court, on the petition of a defendant
12 in a criminal case in which the offense of rape, aggravated rape,
13 sexual abuse, aggravated sexual abuse, rape of a child, sexual
14 abuse of a child, or indecency with a child is alleged in a
15 complaint or indictment or of any person seeking to publish the
16 identity of the victim of an offense of rape, aggravated rape,
17 sexual abuse, aggravated sexual abuse, rape of a child, sexual
18 abuse of a child, or indecency with a child may issue an order
19 authorizing the publication of the identity of the victim if the
20 court finds that the publication of the identity of the victim
21 will not harm the victim."

22 Sec. 13. (a) Sections 1, 2, 3, 4, 5, 11, and 12 of this
23 Act apply only to offenses committed on or after the effective
24 date of this Act, and except as provided in Subsections (b), (c),
25 and (d) of this section, a criminal action for an offense committed
26 before the effective date of this Act is governed by the law
27 existing before the effective date, which law is continued in

1 effect for this purpose as though this law were not in force.

2 (b) Sections 6, 8, and 9 of this Act apply to the
3 prosecution of criminal offenses the commission of which occurred
4 before the effective date of this Act, but the trial of which has
5 not been held before the effective date of this Act.

6 (c) Section 10 of this Act applies to the prosecution of
7 criminal offenses the commission of which occurred before the
8 effective date of this Act, but for which no examining trial has
9 been held before the effective date of this Act.

10 (d) Section 7 of this Act applies to the prosecution of
11 criminal offenses occurring not more than one year before the
12 effective date of this Act.

13 Sec. 14. The importance of this legislation and the crowded
14 condition of the calendars in both houses create an emergency and
15 an imperative public necessity that the constitutional rule
16 requiring bills to be read on three several days in each house
17 be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

THE HONORABLE BILL CLAYTON
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Date 4-17-75

SIR:

We, your COMMITTEE ON Criminal Jurisprudence to whom was referred HB. 284
(measure)

have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
() do pass, with amendment(s).
(X) do pass and be not printed; a committee substitute is recommended in lieu of the original measure.

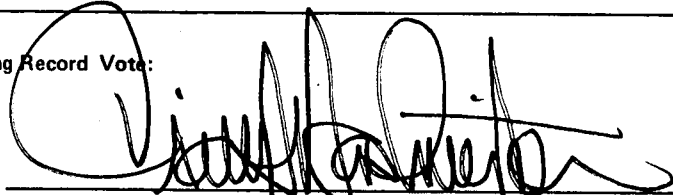
~~The Committee recommends that this measure be placed on the (Local / Consent) Calendar.~~

This measure (X) proposes new law. 2nd amends
() amends existing law.

House Sponsor of Senate Measure: _____

The measure was reported from Committee by the following Record Vote:

7 ayes
0 nays
2 present, not voting
2 absent



Chairman

Return with Original Measure

BILL ANALYSISBackground Information

It is felt that much of the problem associated with reporting and prosecution of rape is that the present statutes discourage reporting and prosecution because of embarrassment to the victim and the difficulty in obtaining a conviction.

Purpose

This bill eliminates the proposed definition of consent, although it does redefine compulsion. It amends the sections dealing with privacy and relevance of prior sexual conduct and defines attempts of aggravated offenses and the corroboration requirement. Also the statute of limitations is increased to three years.

Section by Section Analysis

Section 1. Amends Subsection (b), Section 21.02, Penal Code, by adding that intercourse is without the female's consent if a man compels her to submit by any threat "communicated by actions, words, or deeds, that would prevent resistance by a woman of ordinary resolution,... because of a reasonable fear of harm".

Sec. 2. Amends Subsection (b), Section 21.04, Penal Code, by adding that intercourse is without the other person's consent if "the actor compels the other person to submit or participate by any threat, communicated by actions, words, or deeds,... because of a reasonable fear of harm".

Sec. 3. Amends Chapter 21, Penal Code, by adding Section 21.13

(a) Provides that opinion evidence of the victim's sexual conduct may be admitted only to the extent that "the judge finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probate value."

(b) Provides that if the defendant wishes to ask a question concerning such conduct, he must inform the court out of the hearing of the jury. After such notice, an in camera hearing shall be conducted to determine admissability of the evidence. "The court shall determine what evidence is admissable and shall accordingly limit the questioning." The defendant is prohibited from exceeding the limits of admissability.

(c) Provides that the court shall seal the record of the in camera hearing for "delivery to the appellate court in the event of an appeal."

(d) Provides that evidence of prior felony convictions and evidence of prior felony convictions and evidence of promiscuous sexual conduct of a child 14 years or older are admissable in certain instances.

Sec. 4. Amends Section 15.01, Penal Code, by adding a new subsection (b):

"If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt."

Sec. 5. Amends Article 12.01, Code of Criminal Procedure, 1965, as amended, by extending the statute of limitations for such cases to three years.

Sec. 6. Amends Code of Criminal Procedure, 1965, as amended by adding Article 38.07, providing that "uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within six months after the date on which the offense is alleged to have occurred" is supportable. Also provides that the court "shall instruct the jury that the time which lapsed between the jury only for the purpose of assessing the weight to be given to the testimony of the victim."

Sec. 7. Effective dates

Sec. 8. Emergency Clause

Summary of Committee Action

Summary of Committee Action:

The Committee posted notice in accordance with Rule VIII, Section 13, and considered HB. No. 284 in a (public hearing ~~formal meeting~~) on April 17, ~~1975~~, 1975.

The measure was referred to subcommittee and reported back favorably (with ~~without~~) amendments on April 15 1975, 1975.

The Committee voted, on April 17, 1975, by a record vote of 7 ayes and 0 nays, to report the measure back to the House favorably (with ~~without~~) amendments.

DATE **APR 29 1975**

READ AND APPROVED

House of Representatives

Spuloch

COMMITTEE AMENDMENT NO. 1

1 Amend House Bill No. 284 by striking all below the enacting
2 clause and substituting the following:

3 Section 1. Subsection (b), Section 21.02, Penal Code, is
4 amended to read as follows:

5 "(b) The intercourse is without the female's consent under
6 one or more of the following circumstances:

7 "(1) he compels her to submit or participate by force
8 that overcomes such earnest resistance as might reasonably be
9 expected under the circumstances;

10 "(2) he compels her to submit or participate by any
11 threat, communicated by actions, words, or deeds, that would
12 prevent resistance by a woman of ordinary resolution, under the
13 same or similar circumstances, because of a reasonable fear of
14 harm;

15 "(3) she has not consented and he knows she is
16 unconscious or physically unable to resist;

17 "(4) he knows that as a result of mental disease or
18 defect she is at the time of the intercourse incapable either of
19 appraising the nature of the act or of resisting it;

20 "(5) she has not consented and he knows that she is
21 unaware that sexual intercourse is occurring;

22 "(6) he knows that she submits or participates because
23 she erroneously believes that he is her husband; or

24 "(7) he has intentionally impaired her power to
25 appraise or control her conduct by administering any substance

1 without her knowledge."

2 Sec. 2. Subsection (b), Section 21.04, Penal Code, is
3 amended to read as follows:

4 "(b) The intercourse is without the other person's consent
5 under one or more of the following circumstances:

6 "(1) the actor compels the other person to submit or
7 participate by force that overcomes such earnest resistance as
8 might be reasonably expected under the circumstances;

9 "(2) the actor compels the other person to submit or
10 participate by any threat, communicated by actions, words, or
11 deeds, that would prevent resistance by a person of ordinary
12 resolution, under the same or similar circumstances, because of
13 a reasonable fear of harm;

14 "(3) the other person has not consented and the actor
15 knows the other person is unconscious or physically unable to
16 resist;

17 "(4) the actor knows that as a result of mental disease
18 or defect the other person is at the time of the deviate sexual
19 intercourse incapable either of appraising the nature of the act
20 or of resisting it;

21 "(5) the other person has not consented and the actor
22 knows the other person is unaware that deviate sexual intercourse
23 is occurring;

24 "(6) the actor knows that the other person submits
25 or participates because of the erroneous belief that he is the
26 other person's spouse; or

27 "(7) the actor has intentionally impaired the other

1 person's power to appraise or control the other person's conduct
2 by administering any substance without the other person's
3 knowledge."

4 Sec. 3. Chapter 21, Penal Code, is amended by adding Section
5 21.13 to read as follows:

6 "Sec. 21.13. EVIDENCE OF PREVIOUS SEXUAL CONDUCT. (a)
7 Evidence of specific instances of the victim's sexual conduct,
8 opinion evidence of the victim's sexual conduct, and reputation
9 evidence of the victim's sexual conduct may be admitted under
10 Sections 21.02 through 21.05 of this code (rape, aggravated rape,
11 sexual abuse, and aggravated sexual abuse) only if, and only to
12 the extent that, the judge finds that the evidence is material
13 to a fact at issue in the case and that its inflammatory or
14 prejudicial nature does not outweigh its probative value.

15 "(b) If the defendant proposes to ask any question
16 concerning specific instances, opinion evidence, or reputation
17 evidence of the victim's sexual conduct, either by direct
18 examination or cross-examination of any witness, the defendant
19 must inform the court out of the hearing of the jury prior to
20 asking any such question. After this notice, the court shall
21 conduct an in camera hearing, recorded by the court reporter, to
22 determine whether the proposed evidence is admissible under
23 Subsection (a) of this section. The court shall determine what
24 evidence is admissible and shall accordingly limit the questioning.
25 The defendant shall not go outside these limits nor refer to any
26 evidence ruled inadmissible in camera without prior approval of
27 the court without the presence of the jury.

1 ~~"(c) The court shall seal the record of the in camera~~
2 ~~hearing required in Subsection (b) of this section for delivery~~
3 ~~to the appellate court in the event of an appeal.~~

4 ~~"(d) This section does not limit the right of the state~~
5 ~~or the accused to impeach credibility by showing prior felony~~
6 ~~convictions nor the right of the accused to produce evidence of~~
7 ~~promiscuous sexual conduct of a child 14 years old or older as~~
8 ~~a defense to rape of a child, sexual abuse of a child, or indecency~~
9 ~~with a child. If evidence of a previous felony conviction~~
10 ~~involving sexual conduct or evidence of promiscuous sexual conduct~~
11 ~~is admitted, the court shall instruct the jury as to the purpose~~
12 ~~of the evidence and as to its limited use."~~

13 Sec. 4. Section 15.01, Penal Code, is amended to read as
14 follows:

15 "Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an
16 offense if, with specific intent to commit an offense, he does
17 an act amounting to more than mere preparation that tends but
18 fails to effect the commission of the offense intended.

19 ~~"(b) If a person attempts an offense that may be aggravated,~~
20 ~~his conduct constitutes an attempt to commit the aggravated offense~~
21 ~~if an element that aggravates the offense accompanies the attempt.~~

22 ~~"(c) [(b)]~~ It is no defense to a prosecution for criminal
23 attempt that the offense attempted was actually committed.

24 ~~"(d) [(c)]~~ An offense under this section is one category
25 lower than the offense attempted, and if the offense attempted
26 is a felony of the third degree, the offense is a Class A
27 misdemeanor."

1 Sec. 5. Article 12.01, Code of Criminal Procedure, 1965,
2 as amended, is amended to read as follows:

3 "Article 12.01. FELONIES. Except as provided in Article
4 12.03, felony indictments may be presented within these limits,
5 and not afterward:

6 "(1) no limitation: murder and manslaughter;

7 "(2) ten years from the date of the commission of the
8 offense:

9 "(A) theft of any estate, real, personal or
10 mixed, by an executor, administrator, guardian or trustee, with
11 intent to defraud any creditor, heir, legatee, ward, distributee,
12 beneficiary or settlor of a trust interested in such estate;

13 "(B) theft by a public servant of government
14 property over which he exercises control in his official capacity;

15 "(C) forgery or the uttering, using or passing
16 of forged instruments;

17 "(3) five years from the date of the commission of
18 the offense:

19 "(A) theft, burglary, robbery;

20 "(B) arson;[=]

21 ~~"(4) one year from the date of the commission of the~~
22 ~~offense; any felony in Penal Code Chapter 21 (Sexual Offenses);]~~

23 "[4] ~~[(5)]~~ three years from the date of the commission
24 of the offense: all other felonies."

25 Sec. 6. The Code of Criminal Procedure, 1965, as amended,
26 is amended by adding an Article 38.07 to read as follows:

27 "Article 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF

1 SEXUAL OFFENSE. A conviction under Chapter 21, Penal Code, is
2 supportable on the uncorroborated testimony of the victim of the
3 sexual offense if the victim informed any person, other than the
4 defendant, of the alleged offense within six months after the
5 date on which the offense is alleged to have occurred. The court
6 shall instruct the jury that the time which lapsed between the
7 alleged offense and the time it was reported shall be considered
8 by the jury only for the purpose of assessing the weight to be
9 given to the testimony of the victim."

10 Sec. 7. (a) Sections 1, 2, and 4 of this Act apply only
11 to offenses committed on or after the effective date of this Act,
12 and except as provided in Subsections (b), (c), and (d) of this
13 section, a criminal action for an offense committed before the
14 effective date of this Act is governed by the law existing before
15 the effective date, which law is continued in effect for this
16 purpose as though this law were not in force.

17 (b) Sections 3 and 6 of this Act apply to the prosecution
18 of criminal offenses committed but not brought to trial before
19 the effective date of this Act.

20 (c) Section 5 of this Act applies to the prosecution of
21 criminal offenses committed not more than one year before the
22 effective date of this Act.

23 Sec. 8. The importance of this legislation and the crowded
24 condition of the calendars in both houses create an emergency and
25 an imperative public necessity that the constitutional rule
26 requiring bills to be read on three several days in each house
27 be suspended, and this rule is hereby suspended.

②

Spurlock

COMMITTEE AMENDMENT NO. 2

Amend House Bill No. 284-~~00~~ by striking all above the enacting clause and substituting the following:

A BILL TO BE ENTITLED

AN ACT

relating to the elements, prosecution, and defense of certain sexual offenses and attempted aggravated offenses; amending Subsection (b), Section 21.02, Penal Code, relating to rape; amending Subsection (b), Section 21.04, Penal Code, relating to sexual abuse; adding a Section 21.13 to the Penal Code, relating to evidence of previous sexual conduct of the victim of certain sexual offenses; amending Section 15.01, Penal Code, relating to criminal attempt; amending Article 12.01, Code of Criminal Procedure, 1965, as amended, relating to the time that indictments for certain offenses may be presented; adding an Article 38.07, Code of Criminal Procedure, 1965, as amended, relating to the corroboration of and the weight to be given to testimony of the victim of a sexual offense; providing for the applicability of the Act to offenses previously committed; and declaring an emergency.

DATE APR 29 1975
REL. BY
House of Representatives

BK
018

By: Bailey, Weddington, et al.

H.B. No. 284

A BILL TO BE ENTITLED

AN ACT

relating to the elements, prosecution, and defense of certain sexual offenses and attempted aggravated offenses; amending Subsection (b), Section 21.02, Penal Code, relating to rape; amending Subsection (b), Section 21.04, Penal Code, relating to sexual abuse; adding a Section 21.13 to the Penal Code, relating to evidence of previous sexual conduct of the victim of certain sexual offenses; amending Section 15.01, Penal Code, relating to criminal attempt; amending Article 12.01, Code of Criminal Procedure, 1965, as amended, relating to the time that indictments for certain offenses may be presented; adding an Article 38.07, Code of Criminal Procedure, 1965, as amended, relating to the corroboration of and the weight to be given to testimony of the victim of a sexual offense; providing for the applicability of the Act to offenses previously committed; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subsection (b), Section 21.02, Penal Code, is amended to read as follows:

"(b) The intercourse is without the female's consent under one or more of the following circumstances:

"(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

"(2) he compels her to submit or participate by any

1 threat, communicated by actions, words, or deeds, that would
2 prevent resistance by a woman of ordinary resolution, under the
3 same or similar circumstances, because of a reasonable fear of
4 harm; _____

5 "(3) she has not consented and he knows she is
6 unconscious or physically unable to resist; _____

7 "(4) he knows that as a result of mental disease or
8 defect she is at the time of the intercourse incapable either of
9 appraising the nature of the act or of resisting it; _____

10 "(5) she has not consented and he knows that she is
11 unaware that sexual intercourse is occurring; _____

12 "(6) he knows that she submits or participates because
13 she erroneously believes that he is her husband; or _____

14 "(7) he has intentionally impaired her power to
15 appraise or control her conduct by administering any substance
16 without her knowledge." _____

17 Sec. 2. Subsection (b), Section 21.04, Penal Code, is
18 amended to read as follows: _____

19 "(b) The intercourse is without the other person's consent
20 under one or more of the following circumstances: _____

21 "(1) the actor compels the other person to submit
22 or participate by force that overcomes such earnest resistance
23 as might be reasonably expected under the circumstances; _____

24 "(2) the actor compels the other person to submit
25 or participate by any threat, communicated by actions, words, or
26 deeds, that would prevent resistance by a person of ordinary

1 resolution, under the same or similar circumstances, because of
2 a reasonable fear of harm; _____

3 "(3) the other person has not consented and the actor
4 knows the other person is unconscious or physically unable to
5 resist; _____

6 "(4) the actor knows that as a result of mental
7 disease or defect the other person is at the time of the deviate
8 sexual intercourse incapable either of appraising the nature of
9 the act or of resisting it; _____

10 "(5) the other person has not consented and the actor
11 knows the other person is unaware that deviate sexual intercourse
12 is occurring; _____

13 "(6) the actor knows that the other person submits
14 or participates because of the erroneous belief that he is the
15 other person's spouse; or _____

16 "(7) the actor has intentionally impaired the other
17 person's power to appraise or control the other person's conduct
18 by administering any substance without the other person's
19 knowledge." _____

20 Sec. 3. Chapter 21, Penal Code, is amended by adding Section
21 21.13 to read as follows:

22 "Sec. 21.13. EVIDENCE OF PREVIOUS SEXUAL CONDUCT. (a)
23 Evidence of specific instances of the victim's sexual conduct,
24 opinion evidence of the victim's sexual conduct, and reputation
25 evidence of the victim's sexual conduct may be admitted under
26 Sections 21.02 through 21.05 of this code (rape, aggravated rape,

1 sexual abuse, and aggravated sexual abuse) only if, and only to
2 the extent that, the judge finds that the evidence is material
3 to a fact at issue in the case and that its inflammatory or
4 prejudicial nature does not outweigh its probative value.

5 "(b) If the defendant proposes to ask any question
6 concerning specific instances, opinion evidence, or reputation
7 evidence of the victim's sexual conduct, either by direct
8 examination or cross-examination of any witness, the defendant
9 must inform the court out of the hearing of the jury prior to
10 asking any such question. After this notice, the court shall
11 conduct an in camera hearing, recorded by the court reporter, to
12 determine whether the proposed evidence is admissible under
13 Subsection (a) of this section. The court shall determine what
14 evidence is admissible and shall accordingly limit the questioning.
15 The defendant shall not go outside these limits nor refer to any
16 evidence ruled inadmissible in camera without prior approval of
17 the court without the presence of the jury.

18 "(c) The court shall seal the record of the in camera
19 hearing required in Subsection (b) of this section for delivery
20 to the appellate court in the event of an appeal.

21 "(d) This section does not limit the right of the state
22 or the accused to impeach credibility by showing prior felony
23 convictions nor the right of the accused to produce evidence of
24 promiscuous sexual conduct of a child 14 years old or older as
25 a defense to rape of a child, sexual abuse of a child, or indecency
26 with a child. If evidence of a previous felony conviction

1 Involving sexual conduct or evidence of promiscuous sexual conduct
2 is admitted, the court shall instruct the jury as to the purpose
3 of the evidence and as to its limited use."

4 Sec. 4. Section 15.01, Penal Code, is amended to read as
5 follows:

6 "Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an
7 offense if, with specific intent to commit an offense, he does
8 an act amounting to more than mere preparation that tends but
9 fails to effect the commission of the offense intended.

10 "(b) If a person attempts an offense that may be aggravated,
11 his conduct constitutes an attempt to commit the aggravated offense
12 if an element that aggravates the offense accompanies the attempt.

13 "(c) ~~[(b)]~~ It is no defense to prosecution for criminal
14 attempt that the offense attempted was actually committed.

15 "(d) ~~[(c)]~~ An offense under this section is one category
16 lower than the offense attempted, and if the offense attempted
17 is a felony of the third degree, the offense is a Class A
18 misdemeanor."

19 Sec. 5. Article 12.01, Code of Criminal Procedure, 1965,
20 as amended, is amended to read as follows:

21 "Article 12.01. FELONIES. Except as provided in Article
22 12.03, felony indictments may be presented within these limits,
23 and not afterward:

24 "(1) no limitation: murder and manslaughter;

25 "(2) ten years from the date of the commission of
26 the offense:

1 "(A) theft of any estate, real, personal or
2 mixed, by an executor, administrator, guardian or trustee, with
3 intent to defraud any creditor, heir, legatee, ward, distributee,
4 beneficiary or settlor of a trust interested in such estate; _____

5 "(B) theft by a public servant of government
6 property over which he exercises control in his official capacity; _____

7 "(C) forgery or the uttering, using or passing
8 of forged instruments; _____

9 "(3) five years from the date of the commission of
10 the offense: _____

11 "(A) theft, burglary, robbery; _____

12 "(B) arson; [] _____

13 "~~(4) one year from the date of the commission of the~~
14 ~~offense; any felony in Penal Code Chapter 21 (Sexual Offenses);~~ _____

15 "(4) [~~5~~] three years from the date of the commission
16 of the offense: all other felonies." _____

17 Sec. 6. The Code of Criminal Procedure, 1965, as amended,
18 is amended by adding an Article 38.07 to read as follows: _____

19 "Article 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF
20 SEXUAL OFFENSE. A conviction under Chapter 21, Penal Code, is
21 supportable on the uncorroborated testimony of the victim of the
22 sexual offense if the victim informed any person, other than the
23 defendant, of the alleged offense within six months after the
24 date on which the offense is alleged to have occurred. The court
25 shall instruct the jury that the time which lapsed between the
26 alleged offense and the time it was reported shall be considered

1 by the jury only for the purpose of assessing the weight to be
2 given to the testimony of the victim."

3 Sec. 7. (a) Sections 1, 2, and 4 of this Act apply only
4 to offenses committed on or after the effective date of this Act,
5 and except as provided in Subsections (b), (c), and (d) of this
6 section, a criminal action for an offense committed before the
7 effective date of this Act is governed by the law existing before
8 the effective date, which law is continued in effect for this
9 purpose as though this law were not in force.

10 (b) Sections 3 and 6 of this Act apply to the prosecution
11 of criminal offenses committed but not brought to trial before
12 the effective date of this Act.

13 (c) Section 5 of this Act applies to the prosecution of
14 criminal offenses committed not more than one year before the
15 effective date of this Act.

16 Sec. 8. The importance of this legislation and the crowded
17 condition of the calendars in both houses create an emergency and
18 an imperative public necessity that the constitutional rule
19 requiring bills to be read on three several days in each house
20 be suspended, and this rule is hereby suspended.

-END-

COMMITTEE/FLOOR REPORT FORM

Austin, Texas

1975

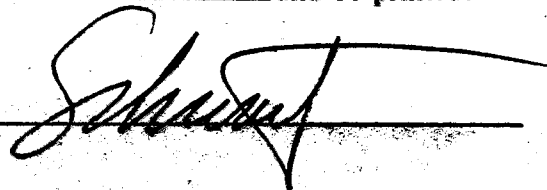
April 6, 1975

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on Jurisprudence to which was referred
H. B. No. 284 have had the same under consideration, and I am instructed to report it back to the Senate
with the recommendation that it do _____ pass _____ and be printed.

Chairman



IF THIS FORM IS TO BE USED AS A FLOOR REPORT, IT IS NECESSARY FOR A MAJORITY OF THE COMMITTEE MEMBERS TO SIGN IT. Paper clip the original and one copy of this form to the original bill and retain one copy for your file.

MAY 9 1975

ENROLLED

H.B. No. 284

AN ACT

relating to the elements, prosecution, and defense of certain sexual offenses and attempted aggravated offenses; amending Subsection (b), Section 21.02, Penal Code, relating to rape; amending Subsection (b), Section 21.04, Penal Code, relating to sexual abuse; adding a Section 21.13 to the Penal Code, relating to evidence of previous sexual conduct of the victim of certain sexual offenses; amending Section 15.01, Penal Code, relating to criminal attempt; amending Article 12.01, Code of Criminal Procedure, 1965, as amended, relating to the time that indictments for certain offenses may be presented; adding an Article 38.07, Code of Criminal Procedure, 1965, as amended, relating to the corroboration of and the weight to be given to testimony of the victim of a sexual offense; providing for the applicability of the Act to offenses previously committed; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subsection (b), Section 21.02, Penal Code, is amended to read as follows:

"(b) The intercourse is without the female's consent under one or more of the following circumstances:

"(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

"(2) he compels her to submit or participate by any

1 threat, communicated by actions, words, or deeds, that would
2 prevent resistance by a woman of ordinary resolution, under the
3 same or similar circumstances, because of a reasonable fear of
4 harm;

5 "(3) she has not consented and he knows she is
6 unconscious or physically unable to resist;

7 "(4) he knows that as a result of mental disease or
8 defect she is at the time of the intercourse incapable either of
9 appraising the nature of the act or of resisting it;

10 "(5) she has not consented and he knows that she is
11 unaware that sexual intercourse is occurring;

12 "(6) he knows that she submits or participates because
13 she erroneously believes that he is her husband; or

14 "(7) he has intentionally impaired her power to
15 appraise or control her conduct by administering any substance
16 without her knowledge."

17 Sec. 2. Subsection (b), Section 21.04, Penal Code, is
18 amended to read as follows:

19 "(b) The intercourse is without the other person's consent
20 under one or more of the following circumstances:

21 "(1) the actor compels the other person to submit
22 or participate by force that overcomes such earnest resistance
23 as might be reasonably expected under the circumstances;

24 "(2) the actor compels the other person to submit
25 or participate by any threat, communicated by actions, words, or
26 deeds, that would prevent resistance by a person of ordinary

1 resolution, under the same or similar circumstances, because of
2 a reasonable fear of harm;

3 "(3) the other person has not consented and the actor
4 knows the other person is unconscious or physically unable to
5 resist;

6 "(4) the actor knows that as a result of mental
7 disease or defect the other person is at the time of the deviate
8 sexual intercourse incapable either of appraising the nature of
9 the act or of resisting it;

10 "(5) the other person has not consented and the actor
11 knows the other person is unaware that deviate sexual intercourse
12 is occurring;

13 "(6) the actor knows that the other person submits
14 or participates because of the erroneous belief that he is the
15 other person's spouse; or

16 "(7) the actor has intentionally impaired the other
17 person's power to appraise or control the other person's conduct
18 by administering any substance without the other person's
19 knowledge."

20 Sec. 3. Chapter 21, Penal Code, is amended by adding Section
21 21.13 to read as follows:

22 "Sec. 21.13. EVIDENCE OF PREVIOUS SEXUAL CONDUCT. (a)
23 Evidence of specific instances of the victim's sexual conduct,
24 opinion evidence of the victim's sexual conduct, and reputation
25 evidence of the victim's sexual conduct may be admitted under
26 Sections 21.02 through 21.05 of this code (rape, aggravated rape,

1 sexual abuse, and aggravated sexual abuse) only if, and only to
2 the extent that, the judge finds that the evidence is material
3 to a fact at issue in the case and that its inflammatory or
4 prejudicial nature does not outweigh its probative value.

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6 concerning specific instances, opinion evidence, or reputation
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9 must inform the court out of the hearing of the jury prior to
10 asking any such question. After this notice, the court shall
11 conduct an in camera hearing, recorded by the court reporter, to
12 determine whether the proposed evidence is admissible under
13 Subsection (a) of this section. The court shall determine what
14 evidence is admissible and shall accordingly limit the questioning.
15 The defendant shall not go outside these limits nor refer to any
16 evidence ruled inadmissible in camera without prior approval of
17 the court without the presence of the jury.

18 "(c) The court shall seal the record of the in camera
19 hearing required in Subsection (b) of this section for delivery
20 to the appellate court in the event of an appeal.

21 "(d) This section does not limit the right of the state
22 or the accused to impeach credibility by showing prior felony
23 convictions nor the right of the accused to produce evidence of
24 promiscuous sexual conduct of a child 14 years old or older as
25 a defense to rape of a child, sexual abuse of a child, or indecency
26 with a child. If evidence of a previous felony conviction

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8 an act amounting to more than mere preparation that tends but
9 fails to effect the commission of the offense intended.

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11 his conduct constitutes an attempt to commit the aggravated offense
12 if an element that aggravates the offense accompanies the attempt.

13 "(c) [4b] It is no defense to prosecution for criminal
14 attempt that the offense attempted was actually committed.

15 "(d) [4c] An offense under this section is one category
16 lower than the offense attempted, and if the offense attempted
17 is a felony of the third degree, the offense is a Class A
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1 "(A) theft of any estate, real, personal or
2 mixed, by an executor, administrator, guardian or trustee, with
3 intent to defraud any creditor, heir, legatee, ward, distributee,
4 beneficiary or settlor of a trust interested in such estate;

5 "(B) theft by a public servant of government
6 property over which he exercises control in his official capacity;

7 "(C) forgery or the uttering, using or passing
8 of forged instruments;

9 "(3) five years from the date of the commission of
10 the offense:

11 "(A) theft, burglary, robbery;

12 "(B) arson;[-]

13 ~~[(4) one year from the date of the commission of the~~
14 ~~offense: any felony in Penal Code Chapter 21 (Sexual Offenses).]~~

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16 of the offense: all other felonies."

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20 SEXUAL OFFENSE. A conviction under Chapter 21, Penal Code, is
21 supportable on the uncorroborated testimony of the victim of the
22 sexual offense if the victim informed any person, other than the
23 defendant, of the alleged offense within six months after the
24 date on which the offense is alleged to have occurred. The court
25 shall instruct the jury that the time which lapsed between the
26 alleged offense and the time it was reported shall be considered

1 by the jury only for the purpose of assessing the weight to be
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6 section, a criminal action for an offense committed before the
7 effective date of this Act is governed by the law existing before
8 the effective date, which law is continued in effect for this
9 purpose as though this law were not in force.

10 (b) Sections 3 and 6 of this Act apply to the prosecution
11 of criminal offenses committed but not brought to trial before
12 the effective date of this Act.

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14 criminal offenses committed not more than one year before the
15 effective date of this Act.

16 Sec. 8. The importance of this legislation and the crowded
17 condition of the calendars in both houses create an emergency and
18 an imperative public necessity that the constitutional rule
19 requiring bills to be read on three several days in each house
20 be suspended, and this rule is hereby suspended.

-END-

H.B. No. 284

President of the Senate

Speaker of the House

I hereby certify that H.B. No. 284 was passed by the House on April 30, 1975, by the following vote: Yeas 127, Nays 10.

Chief Clerk of the House

I hereby certify that H.B. No. 284 was passed by the Senate on May 8, 1975, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED:

May 15, 1975

Date

Signed

Governor

90 Day Bill

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9:45 AM
O'CLOCK

MAY 16 1975

Secretary of State

H.B. No.

284-96

By

By Bailey, Weddington
et al
Anderson

A BILL TO BE ENTITLED
AN ACT

relating to the elements and prosecution of certain sexual offenses; prohibiting the publishing of the identity of victims of sexual offenses in certain circumstances; amending Section 21.01, Penal Code, to define consent; . . . ; and declaring an emergency.

JAN 23 1975

1. Filed with the Chief Clerk of the House.

JAN 27 1975

2. Read first time and Referred to Committee on

Criminal Jurisprudence

3. Fiscal note requested from Legislative Budget Board by

APR 21 1975

4. Reported favorably (~~unfavorably~~) (as amended) and sent to Printer

APR 21 1975 1:45 P M.

APR 21 1975

5. Printed, distributed by Calendar Clerk and sent to Committee on

Calendars 6:45 P M.

APR 29 1975

6. Read second time (amended) and ordered engrossed by (~~Non-record vote~~) (Record Vote of 127 yeas, 11 nays, 1 present and not voting).

7. Motion to reconsider the vote by which H. B. _____ was ordered engrossed and to table the motion to reconsider prevailed (failed) by (Non-record vote) (Record Vote of _____ yeas, _____ nays, and _____ present and not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present and not voting.

APR 30 1975

9. Read third time (~~amended~~) and finally passed by following vote: (~~Non-record vote~~) (Record Vote of 127 yeas, 10 nays, _____ present and not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H.B. _____ was finally passed prevailed (failed) by a (Non-record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present and not voting).

Dorothy Hallman
Chief Clerk of the House

APR 29 1975

12. Sent to Engrossing Clerk

4/29/75

13. Engrossed.

Anna Englin
Engrossing Clerk of the House

APR 29 1975

14. Returned to Calendar Clerk

APR 29 1975

15. Sent to Senate.

MAY 1 1975

16. Received from the House _____

MAY 1 1975

17. Read, referred to Committee on JURISPRUDENCE

MAY 7 1975

18. Reported favorably _____

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

MAY 8 1975

21. Regular order of business suspended by unanimous consent
~~(a viva voce vote.~~
(yeas, nays.

22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

MAY 8 1975

23. Read second time _____ passed to third reading by:
(a viva voce vote.
(yeas, nays.

24. Caption ordered amended to conform to body of bill.

MAY 8 1975

25. Senate and Constitutional 3-Day Rules suspended by vote of 30
yeas, 0 nays to place bill on third reading and final passage.

MAY 8 1975

26. Read third time and passed by
~~(a viva voce vote.~~
(30 yeas, 0 nays.

OTHER ACTION:

OTHER ACTION:

Charles Schnabel
Secretary of the Senate

MAY 8 1975
MAY 8 1975

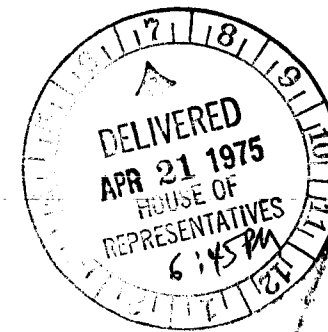
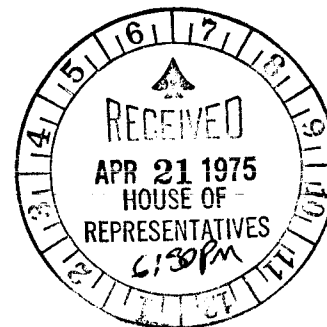
27. Returned to the House.

28. Received from the Senate (with amendments).

RETURNED FROM SENATE

MAY 8 1975

SENT TO ENROLLING CLERK



Dorothy Hallman
Chief Clerk, House of Representatives